

Special House Legislative Commission to Study the Effects and Procedures for the Reorganization of the Rhode Island Coastal Resources Management Council

Wednesday, October 6, 2021
Time 2:00 PM
Meeting Notes
(Not intended as official meeting minutes)

Commission Members in Attendance: Representative Deborah Ruggiero, Representative Lauren Carson, Representative Arthur Handy, Topher Hamblett, Stephen Land, David Baud, Richard Hittinger, Michael McGiveney, William DePasquale, Lawrence Taft, Nancy Letendre, Sven Risom

I. Call Meeting to Order

Representative Ruggiero called the meeting to order at 2:00PM. She thanked the Seaman's Institute in Newport for hosting the meeting and explained the process for the commission. House Policy staff gather information from the meetings and compile a report. The commission's recommendations will then be drafted into legislation. The bills that are drafted will need to be passed by both the House and Senate and then signed by the governor.

The legislation that passed to form the commission has an end date of April 1, 2022, but if the commission decides they need more time, the timeline can be extended through the legislative process.

She reminded the commission that they are not sitting in judgment of past decisions CRMC has made, especially because some of those decisions are the subject of litigation. We are looking forward and working on how to make the process and agency better

II. Presentation by Jeffrey Willis, Executive Director, and James Boyd, Deputy Director, of the Coastal Resources Management Council (CRMC) on an overview of CRMC, staffing, major issues before CRMC, structure and jurisdiction of CRMC.

Jeff Willis started the presentation. CRMC is 50 years old, RI passed legislation in 1971 to create CRMC, one year before Congress passed the Coastal Zone Management Act (1972).

The Coastal Zone Management Act

- Balancing act, balance preservation with economic and cultural needs
- Emphasizes the states are the decision makers
- Encourages participation from multiple stakeholders, federal, statewide, and local
- Entering the federal program allowed access to federal dollars, the CRMC is approximately ½ funded by federal dollars.

By participating in this act the state gets federal consistency authority to look at federal actions in their coastal zones and make decisions regarding those federal actions. The state also gains access to federal dollars, almost a 1:1 match.

CRMC is a management program consisting of:

- Special area management plans
- Designates public Rights of Way to the shore, since 1980.
- Issues permits for work in the coastal zones
- Dredging, and aquaculture, wetland restoration and harbor management

Enforcement staff (2) ensures that activities that were permitted are in compliance.

CRMC's jurisdiction includes the coastal zone of twenty-one communities, which is 200 feet inland from a coastal feature. Special Area Management Plans (SAMP) include the salt water ponds. For other areas, such as chemical plants on the Blackstone River, CRMC needs to investigate and prove that there is an impact to the coastal zones in order to have jurisdiction.

Legislation passed in 1996 bifurcated freshwater wetlands jurisdiction between CRMC and DEM. The agencies created a line in which seaward CRMC would have jurisdiction, and DEM would have jurisdiction on the land side. The act of the legislature took away duplicity in permitting activities.

CRMC is composed of two parts, the Council and staff. The 10 member council is appointed by the governor, three members from communities of greater than 25,000 and three from less than 25,000, three from the general public (one from a coastal community) and the RIDEM director. The professional staff of 30 consists of environmental scientists, engineers, policy staff and support staff.

The "Red Book" is the primary regulatory document, the first level of regulation. Special Area Management Plans (SAMP) look at specific issues and add another regulatory scheme on top of that. Salt Water Pond SAMP started as a ground water issue when in the 1980's subdivisions were proposed on open space and farm land. The ground water was being impacted by the development and therefore affecting the salt water ponds.

The Beach SAMP was developed about ten years ago. Most regulatory schemes are about what you can and cannot do now, but the shoreline change Beach SAMP is asking applicants to look forward at sea level rise, coastal storms and erosion. Applicants have to look forward in the upcoming years and see what the activity is up against through the coastal hazards application.

CRMC was given the responsibility of Rights of Way designations in 1980 by the legislature. CRMC looked at over 360 sites and designated 230. The process is done in one of the standing subcommittees. Rights of Way subcommittee looks at the investigatory process for potential sites that could be designated as a public right of way in perpetuity. CRMC cannot create a right of way. The Rights of Way already exist but they might be lost to time or physical evidence. CRMC finds them and works to develop enough evidence to classify the site as public. The full council decides on committee recommendations.

CRMC is responsible for managing dredge material, much of it is unsuitable to dispose of in normal upland situation. Army Corps of Engineers created in-water CAD cells and clean material is capped on top contaminated material. After the Army Corps finished the dredging project CRMC took over the management of those CADs. Material from ports and marinas has been put in them which generated millions of dollars in income. They are nearly full and the next time the Corps comes in to dredge there will be one or more new cells built.

CRMC also manages habitat restoration. For example, Ninigret pond was being choked with sediment and in partnership with the Army Corps eel grass habitats were restored.

Because CRMC accepts federal funds, NOAA evaluates them and the latest evaluation was a few years ago. CRMC received excellent reviews and only one necessary action, a new data base. There is money in the budget for this.

James Boyd spoke on the Narragansett Bay SAMP. CRMC went through rulemaking and developed a corridor for cables for off shore wind projects. The SAMP is also addressing aquaculture which is going to be the subject of a special meeting of the commission.

Federal Consistency is a requirement of the federal government to comply with the states enforceable policies. If there is a reasonable foreseeable effect on the states coastal zone or users of the coastal zone the state has review authority including:

- Direct actions like building at the naval base
- Licensing activity
- Outer continental shelf plans (including wind energy)
- Review any federal funding to state and local agencies for certain activities

The Ocean SAMP was approved by the council in 2010 and the federal government in 2011. This plan had tremendous stakeholder input. It was aimed at obtaining offshore renewable energy and also protecting the states resources in the offshore, coastal users, and commercial fishermen.

RI has the first offshore wind development in the nation. There is a lot happening offshore right now including eight federal lease areas. The South Fork project is under review and will have direct effects on Rhode Island. Three projects are currently being reviewed and two more will be coming.

III. Discussion and Questions

Chairwoman Ruggiero asked what qualifications, besides representing specific communities, are required for CRMC board members. Jeff Willis answered there is nothing in statute or in CRMC management procedures that requires qualifications of council members. Staff works with the governor's staff to look for volunteers who would be engaged and would be interested in the issues. The staff provides training and helps them understand the subject matter.

Sven Risom asked how the staff and council interact. Jeff Willis responded that staff offers training sessions on a regular basis during council meetings. Sven Risom continued and asked

how the council interacts with staff: Jeff Willis responded that the council will direct staff to look at a particular issue at a meeting and the staff will follow up with that information.

Nancy Letendre asked if the regulation enforcement division interacts with the management and policy planning development. Is it through the planning subcommittee? Jeff Willis responded that it is through the subcommittee, if the subcommittee agrees on a rule change and then they go through the rulemaking process.

Paula Bontempi asked about the advisory council in statute. Does this still exist? Jeff Willis answered that in the 1990's the shipping channel needed dredging. The dredging legislation included the advisory committee. The committee is not in use today. Paula Bontempi responded that legislation had a broad list of representation for the advisory committee including many different expertise. That should be something the commission might consider.

Topher Hamblett stated that there is not a statutory requirement that a council member has expertise on coastal matters. RI is an outlier in the structure. He asked what value does the council add to the decision making process if they have no expertise. Jeff Willis responded that it brings ten different eyes and ears that they might not have had otherwise, they are representing the general public.

Representative Ruggiero asked if the legal counsel is a full-time position. Jeff Willis responded that it is not. Representative Ruggiero then asked if there are conflicts of interest and if the attorney represents the staff or the council. Jeff Willis responded that CRMC has not come across any conflicts that he is aware of. There are many attorneys on staff at the firm that represents CRMC. The attorney represents both the council and staff and is in the office every day as well at public hearings.

Nancy Letendre asked where CRMC sits within the state's organizational chart. Jeff Willis responded that CRMC is not a cabinet agency but is in the executive branch and reports to the governor's office.

Representative Handy stated that one of reasons there are not qualifications for the commission members is because of separation of powers. Has CRMC created pathways to the council? Jeff Willis answered that they have not but it is something to look into.

Representative Handy asked about the costs of an outside attorney versus a staff attorney and Jeff Willis responded that they are about the same.

Chairwoman Ruggiero asked if there are states where the Attorney General is the attorney on behalf of the people. Jeff Willis responded that he did not know.

Sven Risom requested an organizational chart for the council, including how the subcommittees operate and who is on them.

Nancy Letendre asked for information on how the planning and policy subcommittee operates. One of the concerns with the local municipalities is they believe that the staff is qualified and excellent but want to understand the decision making process of the council.

Topher Hamblett stated that he does not know what the statutes say specifically about whether or not there shall be legal counsel, but he believes there is a benefit to having a full-time legal counsel on staff fully focused on the matters of CRMC.

Jamie Hainsworth asked how often the council goes against the staff's recommendations. Jeff Willis answered that it does not happen often.

Michael McGiveney asked if the council has to provide a written legal reason when it goes against the staff. Jeff Willis answered that when the council makes a decision at a hearing it has to vote and must provide a written decision. The legal counsel writes the decision.

Nancy Letendre asked if there are standards for which the decisions are made that apply to all applications and permit requests. Jeff Willis responded that decision making at the council follows programmatic requirements and they are put on the record.

Bill Depasquale asked if the council has to stipulate their reasons out of the Red Book if they go against a staff recommendation. Jeff Willis responded that they do.

Representative Handy asked if a city or town is required to make the request to research a right of way. Jeff Willis responded that there are a number of pathways, he mentioned the towns because the municipality has the records. CRMC does not have a budget for Rights of Way. Roger Williams University law school fellows have helped with the legal research. If our staff cannot get a right of way unblocked through the normal enforcement procedure, the Attorney General steps in.

Topher Hamblett responded that he is concerned that there is no budget for Rights of Way because it is important work.

Nancy Letendre asked how CRMC works with the Attorney General. Jeff Willis responded that CRMC is currently working with the Attorney general on a case that CRMC could not get what was needed out of its enforcement program and that is going well.

Sven Risom asked how CRMC monitors Rights of Way with so few enforcement officers. Jeff Willis responded that CRMC partners with organizations, including Save the Bay, Clean Ocean Access on Aquidneck Island, and an Adopt an Access program. The partners look at the upkeep and maintenance. He continued that CRMC put in a request to change an open administrative position to an enforcement position and DOA granted that request. The position will also work on Rights of Way enforcement.

Representative Ruggiero asked how many full-time employees are at CRMC. Jeff Willis responded 27, and they are advertising for three positions which should be filled in a couple of months.

Lawrence Taft asked about the relationship between CRMC and the URI Coastal Resources Center. Jeff Willis responded that the URI Coastal Resources Center was created in 1970, they were the policy arm in the 70's and now are a partner as the URI Coastal Resources Center Sea Grant program. They are great partners, especially during the SAMP process.

Paula Bontempi asked if an ecological impact study and economic analysis were performed on the areas for offshore wind. James Boyd answered that there was a large ecological impact study, RI had input and in 2013 a section of the original lease plan was excluded because it is an important commercial fishing area.

Richard Hittinger stated that there is a requirement when the environmental impact statements are done that the cumulative effect of all the projects be evaluated. To date they are looking at small projects but the entire area is larger than the state of RI. How has the cumulative impact been evaluated? Jeff Willis responded that the Bureau of Ocean Energy Management (BOEM) did conduct a supplemental environmental impact statement to look at the cumulative impacts of reasonably foreseeable future projects for Vineyard Wind. The cumulative impact is the responsibility of BOEM, and they address them on each project but only for reasonably foreseeable projects.

Richard Hittinger stated that it seems like a very large task for a staff of 27 to review these projects. Is CRMC taking advantage of outside help for this? James Boyd responded that there is a dedicated offshore wind team including himself, two ocean engineers and policy staff. CRMC is also part of the cooperating agencies and relies on the other cooperating agencies for the input and reviews, including NOAA and the division of national marine fisheries service. .

Representative Handy asked if there are other things that RI benefits from with the projects close to NY. James Boyd responded that as part of the CMZ the national interest has to be balanced with the state's interest.

Richard Hittinger stated that there is a major federal initiative called 30/30 which is going to change the reflection of how coastal areas are going to be used. He asked what input does CRMC have on this program. James Boyd answered that the program is part of President Biden's goal to conserve 30 percent of the nation's resources by 2030. It is land, ocean and marine resources. BOEM is doing its due diligence along with cooperating agencies to avoid impacts to habitat, and where they are unavoidable, minimize and mitigate impacts. The Ocean SAMP lays out the process.

IV. Adjournment

Rep. Ruggiero adjourned the meeting at 3:20. The next meeting will be November 10 at Jamestown Town Hall. She suggested adding another meeting to the calendar to continue this conversation.